

STATE OF MICHIGAN
COURT OF APPEALS

TERRACE LAND DEVELOPMENT
CORPORATION, C AND L, INC., and PETER
SHEFMAN,

UNPUBLISHED
April 28, 2005

Plaintiffs-Counter-Defendants-
Appellants,

v

SEELIGSON & JORDAN, LESLIE R.
SEELIGSON, and LAWRENCE R. JORDAN,

No. 251699
Washtenaw Circuit Court
LC No. 99-005118-NM

Defendants-Counter-Plaintiffs-
Appellees.

Before: Kelly, P.J., and Sawyer and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting defendants' motion for summary disposition on statute of limitations grounds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs filed a complaint that along with other claims alleged legal malpractice arising out of defendants' representation of plaintiffs in a Washtenaw Circuit Court action. The parties agree that defendants' representation was terminated on June 17, 1997. Plaintiffs filed their complaint on May 4, 1999. The complaint was delivered to an officer for service on July 16, 1999, and it was actually served on July 30, 2000. The circuit court granted defendants' motion for summary disposition, finding that the action was barred when the complaint was not placed with an officer or served within the two-year limitation period.

This Court reversed, finding that under *Buscaino v Rhodes*, 385 Mich 474; 189 NW2d 202 (1971), the limitation period is measured at the time the complaint is filed. *Terrace Land Development Corp v Seeligson & Jordan*, 250 Mich App 452; 647 NW2d 524 (2002). The Court remanded for further proceedings consistent with its opinion.

Before any proceedings took place on remand, the Supreme Court issued *Gladych v New Family Homes, Inc*, 468 Mich 594; 664 NW2d 705 (2003), in which it overruled *Buscaino*, *supra*. The Supreme Court found that the mere filing of a complaint was insufficient to toll the statute of limitations. It was necessary to comply with the requirements of MCL 600.5856 and to

serve the defendant or place the summons with an officer for service before the limitations period expired. The Court gave its decision limited retroactive effect, applying the holding to cases in which this specific issue has been raised. In all other cases the opinion would apply prospectively, effective September 1, 2003. *Id.*, 595.

Based on *Gladych*, defendants again moved for summary disposition on statute of limitations grounds. The circuit court found that *Gladych* applied, and it granted defendants summary disposition.

On appeal, plaintiffs argue that this Court's prior decision was law of the case, and the circuit court erred in taking action inconsistent with that opinion. We disagree and affirm.

Determination whether the law of the case applies is a question of law subject to de novo review. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals as to that issue. *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). The doctrine seeks to promote finality as to litigated issues and to prevent forum shopping. *International Union, UAW v Dep't of Mental Health*, 211 Mich App 20, 24; 535 NW2d 210 (1995). However, the doctrine merely expresses the practice of courts generally and is not a limit on their power. *Locricchio v The Evening News Ass'n*, 438 Mich 84, 109; 476 NW2d 112 (1991).

The decision of an appellate court is controlling at all subsequent stages of litigation, so long as it is unaffected by a higher court's opinion. *Reeves v Cincinnati, Inc (After Remand)*, 208 Mich App 556, 559; 528 NW2d 787 (1995). Normally, the law of the case applies regardless of the correctness of the prior decision. *Sumner v GMC (On Remand)*, 245 Mich App 653, 662; 633 NW2d 1 (2001). However, the doctrine will not preclude reconsideration in light of a subsequent change in the law. *Ashker, supra*, 13.

The circuit court properly found that there was a change in the law subsequent to this Court's initial decision. The issue was raised prior to the Supreme Court's decision in *Gladych*, and was subject to the limited retroactive application of that case. Under *Gladych*, plaintiffs' complaint was barred by the statute of limitations where the complaint was not served or placed in the hands of the process server before the limitations period ran. The circuit court properly granted summary disposition to defendants.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Michael J. Talbot